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All Seasons v. Wellington

ALL SEASONS HOSPITALITY, LLC, Plaintiff,
v. WELLINGTON INN, LLC, and BHARAT PATEL, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Civil Action - Law, No. 2005-203-C

Judgment by Default; Discretion of Court in Opening Default Judgments; Justifiable Excuse for Late Filing

1. Pa.R.C.P. 237.3 states the requisites for which, when met, the Court shall grant a Petition for Relief from a Judgment of Default.
2. Pa.R.C.P. 237.3 requirements are as follows: (1) Complaint or Answer must state a meritorious defense and (2) Petition requesting the opening of default judgment shall be filed within ten (10) days after the entry of the default judgment on the docket.
3. In addition to this bright line rule of Pa.R.C.P. 237.3, the comments to Rule provide courts with judicial discretion to open a judgment after the ten (10) day forbearance period.
4. Case law has imposed three requirements in order for the Court to use its discretion to open a judgment by default when the petition is filed outside the timeframe provided in the rule: (1) petition has been promptly filed, (2) meritorious defense can be shown, and (3) reasonable explanation or legitimate excuse for inactivity or delay resulting in the entry of the judgment is specified.
5. Courts have routinely found that a petitioner's failure to meet any "prong" of the three-part test is fatal to obtaining the relief sought.
6. Where defendant offered vacationing for two weeks after the service of the complaint, problems in finding legal representation, and not being a native speaker as excuses for the delay, he failed to meet the burden of showing a legitimate explanation for his failure to file a responsive pleading within the timeframe stated in the rules.
7. Pennsylvania Supreme Court is very clear in setting forth the recognized requirements for opening a judgment, and the test given makes no reference to the need to consider the demands of equity or judicial efficiency. Therefore, the Court will not consider the arguments that are devoid of legal support in rendering the final decision.
8. Defendant demonstrated a clear dilatory attitude in meeting the deadlines required by the Rules of Civil Procedure; therefore, it would be an abuse of discretion to grant the Defendant's Petition for Relief from a Judgment of Default.

Appearances:

Frederic G. Antoun Jr., Esq., *Attorney for Plaintiff*

Stephen D. Kulla, Esq., *Attorney for Defendants*

OPINION

Van Horn, J., February 1, 2006

Statement of the Case

The parties entered into an Agreement of Sale on August 22, 2003 under which the Plaintiff would purchase a motel and restaurant business in Fulton County from the Defendant.[1] During the negotiation process, Plaintiff clearly expressed concerns about the financial status of the business. To address those concerns, language in the Agreement of Sale provided that Defendant must furnish only true, accurate and complete financial statements before closing would be appropriate. Upon receipt of these records and an alleged personal guarantee by the Defendant, Plaintiff determined that the room revenues would cover debt service and operating expenses; therefore, Plaintiff moved to close on the sale on March 20, 2004. In addition to the real estate contract, the parties entered into a separate agreement regarding the replacement of certain equipment by the Defendant at the establishment.

Following closing, Plaintiff obtained the official hotel revenue reports from the Days Inn Corporation. The reports showed that the average room revenues from previous years were substantially lower than the figures that Defendant showed Plaintiff before closing. Plaintiff also felt that the Defendant was not fulfilling the obligations set forth in the second contract. Therefore, Plaintiff filed a Complaint raising breach of contract, misrepresentation and promissory estoppel claims which alleged that the financial statements given by Defendant were untrue, that the Defendant made false guarantees, and that several duties outlined in the second contract were not performed by Defendant.

The Complaint was filed on July 15, 2005 and served on Mr. Patel on July 22, 2005 by the Sheriff of Washington County, Maryland. Mr. Patel accepted service for the Complaint as an individual, and he also accepted service for the Defendant Corporation because he is the sole owner of the Corporation. During the first week of August, an agent for the Defendant called Plaintiff's attorney to request additional time for Defendant to respond to the Complaint. Both parties acknowledge that Plaintiff granted this request and extended the time to respond, but there is a factual dispute regarding the actual time given for the extension. The Plaintiff contends that the Defendant was told it would only have until August 19, 2005 (eight [8] days beyond the typical response deadline); whereas, Defendant contends that the Plaintiff gave an open-ended extension of time. This factual determination is irrelevant to the ultimate outcome given the events that transpired thereafter.

Despite the extension of time, Defendant failed to file an Answer. On August 22, 2005, Plaintiff forwarded an IMPORTANT NOTICE, pursuant to Rule 237.1 of the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.), to Defendant due to its failure to file any responsive pleadings to the Complaint. The Defendant again failed to file a response within the ten (10) day forbearance period following this Notice. Therefore, on September 2, 2005 (11th day after the Rule 237.1 Notice), Plaintiff filed a Praecipe for Entry of Judgment upon Default against Defendant. The Prothonotary entered Judgment on this same date for an unspecified amount. Defendant finally took legal steps in this matter on September 16, 2005 when it filed a Motion for Relief of Judgment by Default[2] and Answer to the Complaint (with New Matter).

Based on Defendant's Motion for Relief of Judgment, the Court ordered the parties to file briefs in support of their respective positions on this Motion no later than fourteen (14) days before the argument date. The Court held oral argument on January 10, 2006 in Fulton County. After reading the parties' briefs, listening to testimony provided during the hearing, considering the legal arguments asserted by counsel and reviewing the overall record, Defendant's Motion for Relief of Judgment is now ripe for decision.

Discussion

The Court finds that the rules and case law precedent governing the opening of default judgments are quite clear. Pa.R.C.P. 237.3 states the requisites which, when met, require an automatic opening of judgments by default by the Court. The two requirements of Rule 237.3 are as follows: (1) Complaint or Answer must state a meritorious defense and (2) Petition requesting the opening of the default judgment is filed within ten (10) days after the entry of the default judgment on the docket. In addition to this bright line rule, the comments to this Rule and the Supreme Court case of Schultz v. Erie Insurance Exchange provide that there are times where the Court may use judicial discretion to open a judgment after the ten (10) day forbearance period.

The case of Schultz v. Erie Insurance Exchange is the lead case in outlining the requirements for a court to properly exercise its discretion in opening a judgment. 477 A.2d 471 (Pa. 1984). "The court will only exercise this discretion when (1) the petition has been promptly filed, (2) a meritorious defense can be shown, and (3) the failure to appear can be excused." Id. at 472. All three criteria **must** be met, and the three requirements must coalesce. Cross v. 50th Ward Community Ambulance Company, 528 A.2d 1369, 1371 (Pa. Super. 1987), citing Keystone Boiler Works, Inc. v. Combustion & Energy Corp., 439 A.2d 792 (Pa. Super. 1982).

Courts have routinely found that a petitioner's failure to meet any "prong" of the three-part test is fatal to obtaining the relief sought. Cross, 528 A.2d 1369, 1371 (Pa. Super. 1987). Therefore, courts are not required to examine the facts alleged to sustain all three prongs because failure to offer sufficient facts under one prong defeats the petition. In this case, the Court finds that the latter element of the formula set forth in Schultz, requiring a justifiable explanation for having failed to respond in a timely fashion to the original complaint, was not established. Therefore, the Court will only address the facts with respect to this latter prong in this Opinion.

Defendant Failing to Offer Justifiable Explanation for Late Filing

To adequately fulfill this prong, defendants must supply the Court with a reasonable explanation or legitimate excuse for the inactivity or delay resulting in the entry of the judgment. This Court does not find that any of the three (3) reasons set forth by the Defendant provides a justifiable explanation for the delay.

First, defense counsel argues that the Defendant was out-of-state for two weeks immediately after service of the complaint. The Defendant testified that he left for a two-week trip, partially business and partially personal, to Virginia Beach after the service of the Complaint and this vacation hindered his ability to file his Answer within the proper time. As per the Pennsylvania Rules of Civil Procedure, defendants are given twenty (20) days after proper service to file an answer to a complaint. This Defendant was actually given, at a minimum, twenty-eight (28) days to file an Answer due to the eight (8) day extension given by Plaintiff. The Defendant accepted the service before his trip so he was fully aware when the time period began. Additionally, even if he left for a trip for fourteen (14) days, the Defendant would have returned home to have fourteen (14) more days to file an Answer. Despite the lawsuit possibly carrying significant liability for the Defendant, he did not sense the urgency. The Rules were developed for a reason, and although they are forgiving at times, this blatant disregard for the time periods set forth in the rules cannot be ignored. A vacation under these factual circumstances is not a legitimate explanation for the failure to comply within the time constraints.

Secondly, Defendant attributes the failure to comply on his hardship in finding an attorney and then his later hardship in securing an appointment with his present counsel in time to meet the deadlines. The Defendant first claims that he contacted six or more attorneys prior to being able to secure the services of his present attorney. Then, the Defendant further claims that when he obtained the services of his current counsel, he was unable to secure an appointment with counsel until a week after his initial contact and this resulted in his late filing. The Court finds that the Defendant's "problems" with obtaining legal representation are not sincere. The Defendant, first, could not specifically identify any attorney whom he tried to contact by name or provide information as to when the attempted contacts were made. Second, the Defendant testified that he had a substantial history of working with several different attorneys. He had previously done business and sought the legal advice from attorneys in Maryland, Virginia, and other states. Despite these contacts, he failed to use his resources and contact any past attorney to see if they could assist or refer him to other counsel. And finally, the Court depends on prior court precedent to find that delays relating to scheduling with lawyers or general confusion over the urgency of the needed appointment did not serve as an excuse for late filing. In the Schultz case, the Supreme Court disagreed with the Superior Court's position that problems with obtaining counsel or attorney's lack of knowledge as to how quickly the matter needed to be handled would be a legitimate excuse and the untimely answer would be pardoned. 455 A.2d 149 (Pa. Super. 1983). The Supreme Court reversed the Superior Court and ruled that the lower court was correct in holding that the defendant's failure to find legal representation and deliver the complaint to counsel in a timely fashion was a dilatory attitude and not an excuse for the resulting late filing. 477 A.2d at 473.

Finally, the Defendant asserts the fact that he is foreign born and he is not a native English speaker as an excuse for the delay. The Defendant testified that he owns and operates several hotels in multiple jurisdictions and he possesses a Bachelor Degree in Engineering. From these facts, the Court rightly assumes that he is a successful educated businessman who should be fully capable of understanding the legal requirements clearly set forth in the Complaint. The Defendant also testified that he has been involved with at least two (2) prior lawsuits in the recent past related to his business ventures. Prior experience with our justice system renders him well prepared to acknowledge and understand the responsibilities of filing an answer. Finally, the Defendant acknowledged that his agent called the Plaintiff to obtain an extension to the typical twenty (20) day response period; therefore, he was aware of the responsibility of meeting the rule's deadline for the Answer or this request for the extension of time for filing would never have been made to Plaintiff. The Court is fully convinced that the Defendant's nationality in no way hindered his ability to answer in a timely manner.

In summary, the Court believes that the Defendant carried a cavalier attitude towards the whole process and openly ignored deadlines clearly given to him with no concern for suffering consequences. He has failed to meet the burden of showing a legitimate explanation for his failure to file a responsive

pleading within the timeframe set forth in the rules. With the failure to fulfill this last Schultz prong, it would be an abuse of discretion to grant the petition to open judgment.

Other Issues

Despite the established precedent of the Schultz formula being the only recognized legal test for opening judgments, the Defendant attempts to assert two further arguments. First, the Defendant states that the amount in controversy is one million dollars; therefore, he believes that equity demands the opening of the judgment and a trial on the merits of the case. Second, the Defendant contends that since a trial will be needed to determine damages, there would be no delay in the administration of justice or significant prejudice if the Court would open this judgment.

For both of these arguments, the Defendant fails to give any legal authority which states that the Court should consider either argument when using its discretion in opening a default judgment. The Schultz Court is very clear in setting forth the recognized requirements for opening a judgment and the test given therein makes no reference to the demands of equity or judicial efficiency. Therefore, the Court will not consider these arguments devoid of legal support in rendering this decision.

Conclusion

The Court finds that this is a case where the Defendant has demonstrated a clear dilatory attitude in meeting the deadlines required by the Rules of Civil Procedure. The Defendant has further failed to set forth justifiable explanations to excuse his failure to timely file an Answer. With the Defendant failing to fulfill this third prong of the Schultz formula, the Court hereby denies the Defendant's Motion for Relief of Judgment by Default.

ORDER OF COURT

And now this 1st day of February, 2006, having considered Defendant's Motion for Relief of Judgment by Default, briefs submitted by counsel, and oral arguments presented to this Court on this matter, it is hereby ordered that the Defendant's Motion for Relief of Judgment by Default is hereby denied.

[1] The lawsuit does list Wellington Inn, LLC and Bharat Patel as Defendants. However, Mr. Patel is the sole owner and operator of the corporate defendant. The testimony at the hearing indicated that individual Defendant clearly held himself out to be one and the same as the corporate Defendant. Therefore, the Court treats both Defendants as one.

[2] The Court notes that this type of relief is usually sought by filing a Petition for Relief from a Judgment of Default. Though this Defendant filed a *Motion* for Relief, the analysis will be the same and the court will use the two interchangeably from this point forward.